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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. [redacted] 5

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

RICHARD S. FOLSOM,
FRANK S. RIGHEIMER,
Attorneys for Board of Education of City of Chicago;
BARNET HODES,
Corporation Counsel of City of Chicago.

RALPH W. CONDEE,
FRANK R. SCHNEBERGER,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT BY APPELLEES OF MATTERS AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

MAY IT PLEASE THE COURT:

Appellees, Board of Education of the City of Chicago, James B. McCahey, Ernst Buehler, Irwin Walker, Paul Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, Mrs. W. S. Hefferan, Frank H. Landmesser, Harry H. Brackett, City of Chicago, Edward J. Kelly, Gustave A. Brand and Robert

Upham, respectfully present to the court the following matters and grounds making against the jurisdiction of the Supreme Court of the United States on the appeal of appellants from the Supreme Court of Illinois to the Supreme Court of the United States.

A Statement of the Case.

The one issue involved in this case was and is—did the act of the legislature of the State of Illinois commonly called the Miller Act of 1926 as amended in 1927, grant to Chicago teachers vested property rights in future installments of the pensions created by that act?

Chicago's retired teachers are the recipients of two pensions; one under the Teachers' Pension Act of 1909 and the other under the Miller Act of 1926, as revised.

The Pension Act of 1909 (not involved herein) gives a pension of $1,000.00 per annum to each teacher who retired after serving the schools for a specified number of years. The fund to provide payment of these pensions is maintained by contributions from the teachers and a special levy of an annual tax for that purpose. (Sec. 152-165, both inclusive, School Law, Par. 175-190; Chap. 122, Smith-Hurd R. S. 1935.) These pensions under the 1909 Act have been continuous and regular since the law was passed in 1909, and have never been diminished.

The second pension law (the Miller Act) enacted by the legislature of Illinois became effective May 19, 1926. It is a complete and separate act not connected with the Pension Act of 1909 and in no way affects it. The Miller Act provided for the compulsory retirement of teachers at age 70, and gave a pension of $1,500.00 per annum to each teacher so retired. This pension was given in addition to the $1,000.00 per annum pension provided for each teacher under the regular Teachers' Pension Act (Act of 1909) (R. 72).

The additional pensions of $1,500.00 paid to retired teach-

ers under the Miller Act were paid, as stated in the Act itself, solely "from the money derived from the general tax levy for educational purposes," which is the source of revenue provided by law for the payment of salaries of teachers and others actively engaged in operating the schools of Chicago.

To this second and additional pension the teachers contribute nothing.

In 1927 the Miller Act was amended by adding Section 3, which permitted the voluntary retirement of teachers and provided for pensions on a sliding scale ranging from $1,000.00 to $1,500.00 per year to teachers voluntarily retiring between the ages of 65 and 70 (R. 84-85).

The financial depression through which we have been passing seriously affected the revenues of the Board of Education. Tax collections were and are very bad due also to the depression. Through necessity, and in order to keep the schools open as required by law, the appellee, Board of Education, after a careful consideration of its financial condition, in 1933 reduced the school year from 10 to 9 months, the minimum allowed by law (R. 153); made reductions of 23½% in salaries of all of its active employees, including teachers (R. 143). It took numerous other steps in the interests of economy in order to operate within its income; mortgaged its real estate in 1934 to secure the payment of a loan of $22,500,000.00 from the Reconstruction Finance Corporation in order to pay teachers their unpaid and past due salaries, and then examined into the amount being paid out of its educational fund for pensions to retired teachers rendering no service to the School System. It ascertained the following:

Approximately 70% of the teachers in the School System are elementary (grammar school) teachers. Under the necessary economies the maximum salary of an elementary school teacher was reduced from $2,500.00 to $1,912.50 and

the lower group salary of an elementary teacher was reduced from $1,500.00 to $1,127.50 (R. 137). Neither the pension paid from the Teachers' Pension Fund under the Act of 1909 nor pensions paid under the Miller Law (under the Act of 1927) by the Board of Education were reduced, with the result that a retired teacher received two pensions aggregating $2,500.00 per annum or $587.50 more than the maximum salary and $1,372.50 more than the lower group teachers receive for conducting classrooms daily during the school year.

In 1926, when the Miller Act became a law, the cost to the Board for annuity pensions was $12,000.00 (R. 136). In a period of eight years thereafter, the expenditures for that purpose increased each year by leaps and bounds until in 1934 the Board expended $1,000,906.87 for such Miller Law pensions, an increase of nearly 1,000%, thereby depriving the educational fund of this amount which otherwise could be used for current salaries and educational expenses (R. 137, 142).

These facts were presented to the legislature, together with the fact that the economy to be effected by reducing the future installments of Miller Law pensions, payable to retired teachers, already receiving substantial pensions from the Teachers' Pension Fund, would enable the appellee, Board of Education, to continue to maintain the efficient standard of the schools and keep them open nine months of the year as required by law, and maintain salaries at the reduced rate and also give proper consideration to the already over-burdened taxpayers (R. 141-143).

By the amendment to the Miller Act effective July 12, 1935, the provision for voluntary retirement of teachers provided for in Section 3 was repealed; the compulsory retirement age of teachers was fixed at 65 years, and the Miller Act pensions were reduced to $500.00 per annum (Par.

614, Chap. 122, Smith-Hurd Ill. R. S. 1935) (R. 94). This action remedied the evil of the continuously increasing expense to the educational fund for a non-educational purpose, and corrected the unjust situation created by excessive, gratuitous payments of hundreds of dollars made to each retired teacher above the maximum salary of active elementary teachers. As a result the total sums paid from the two pension acts to retired teachers is $1,000.00 per annum from the regular Teachers' Pension Fund, plus $500.00 per annum paid pursuant to the Miller Act from the educational fund, totalling $1,500.00.

Appellants contend that the Miller Act in existence at the time they retired or at the time they made application for retirement, providing for the payment of $1,500.00 per annum, constituted a contract between themselves and the State, and thereby granted them vested property rights in future installments of pensions.

There is no contract pleaded or in evidence, nor did the Miller Act create or provide any fund, nor did any appellant contribute to any fund in which a vested right or interest is claimed or could be claimed under the Miller Act. No such fund exists.

The Miller Act is a local law, enacted to aid the State in performing a purely governmental function, the doing of a public work, namely, the maintenance of the public schools.

That the Supreme Court of the United States may properly decline to take jurisdiction of the appeal will be apparent from an inspection of the record and a consideration of the following grounds making against the jurisdiction of that court.

I.

There is no Federal question before this Honorable Court for its determination. Appellants had no contract that could have been impaired, nor had they any vested property rights that could have been taken without due process of law.

The question whether the subsequent act of the legislature (Miller Act, 1935) referred to and set forth in appellants' jurisdictional statement impaired the obligation of alleged contracts for payment of pensions for life was not an issue. The defense was, and will be before this Honorable Court if taken, that the appellants had no contract which under any circumstances could be impaired, nor any vested property rights which could have been taken without due process of law.

The Supreme Court of Illinois in its opinion briefly stated the issues that were before it for its determination, and said:

> "It is stated by counsel for appellants in their reply brief: 'Appellants' case rests upon the proposition that they have vested property rights to the payment of future installments of annuities on the basis fixed by the law at the time they retired or being entitled to retire made application for retirement.' "

In determining this question, the Court said:

> "A right to be within the protection of the Constitution must be a vested right. It must be something more than a mere expectancy based upon an anticipated continuance of an existing law. If before rights become vested in particular individuals the convenience of the State induces amendments or repeal, such individuals have no cause to complain."

Continuing, the Court said:

> "The decisions of this court have uniformly been that pensions are not based upon contract but are mere expectancies based upon anticipated continuance of an existing law, and that future installments of pensions are not vested property rights. It follows that the State may reduce future installments of pensions without violating the provisions of the State or Federal Constitution."

We respectfully submit that appellants' contention that this Court should take jurisdiction merely because they have asserted and argued in the lower court a purported federal constitutional issue, is not sufficient. The bare averment of a federal question is not sufficient. This was determined by this Honorable Court in the case of *New Orleans* v. *New Orleans Water Works Co.*, 142 U. S. 79 (35 L. Ed. 943), wherein this Court held (page 88):

> "Applying the principle of this decision to the present case, we think that before we can be asked to determine whether a statute has impaired the obligation of a contract, it should appear that there was a legal contract subject to impairment, and some ground to believe that it has been impaired; and to constitute a violation of the provision against depriving a person of his property without due process of law, it should appear that such person has a property in the particular thing for which he is alleged to have been deprived."

To the same effect is *Bier* v. *McGehee*, 148 U. S. 137 (37 L. Ed. 397) and *Central Land Co.* v. *Laidley*, 159 U. S. 103 (40 L. Ed. 91).

The alleged Federal questions not being based upon any contract, and the Supreme Court of Illinois having held that the Miller Law created no vested rights, we respect-

fully pray that the Supreme Court of the United States will not take this case on appeal.

II.

The Federal question attempted to be asserted is foreclosed by previous United States Supreme Court decisions.

(a) This Honorable Court has repeatedly determined that pensions are mere bounties of the Government which the Government can give, withhold or recall in its discretion. This was held to be the law in *United States* v. *Teller*, 107 U. S. 64 (27 L. Ed. 352), a case involving a Federal pension. The Court in so holding, on page 68 said:

> "* * * No pensioner has a vested legal right to his pension. Pensions are the bounties of the Government, which Congress has the right to give, withhold, distribute or recall, at its discretion. Walton *v.* Cotton, 19 How., 355 (60 U. S., XV, 659)."

Under the Miller Law presented to this Honorable Court for its determination by this appeal, the pensions, although in the act called annuities, are payable out of taxes levied for educational purposes and not out of any fund created by the act, or otherwise, to which the teachers, recipients of the pensions, contribute, or into which deductions from their salaries are paid. The pension is payable annually and is not a lump sum pension payable on retirement. No installments of pensions were past due and unpaid when the 1935 amendment complained of became effective.

In *Pennie* v. *Reiss*, 132 U. S. 464 (33 L. Ed. 426), a pension law of the State of California was before this Honorable Court. That law created a fund termed the Police Life and Health Insurance Fund, out of which the pensions were to be paid. The statute required that two dollars a month be deducted from the salaries and paid into the fund. It was first contended that the fund created was public money,

but the plaintiff changed his position and contended that the fund was private money accumulated from the contributions of the members of the police force. The act provided that upon the death of one of the contributors there shall be paid out of said Health and Life Insurance Fund to the legal representative of the deceased person the sum of one thousand dollars, and in case of resignation due to bad health or bodily infirmity, there should be paid to the contributor the amount of the principal that he may have contributed to the fund. The Court in construing this statute, on page 471 said:

> "* * * It requires no argument or citation of authorities to show that, in making a disposition of a fund of that character, previous to the happening of one of the events mentioned, the State impaired no absolute right of property in the police officer. The direction of the State, that the fund should be one for the benefit of the police officer or his representative, under certain conditions, was subject to change or revocation at any time, at the will of the Legislature. There was no contract on the part of the State that its disposition should always continue as originally provided. Until the particular event should happen upon which the money or a part of it was to be paid, there was no vested right in the officer to such payment. His interest in the fund was, until then, a mere expectancy created by the law, and liable to be revoked or destroyed by the same authority. The law of April 1, 1878, having been repealed before the death of the intestate, his expectancy became impossible of realization; the money which was to pay the amount claimed had been previously transferred and mingled with another fund, and was no longer subject to the provisions of that Act."

The foregoing decision was discussed at length by the Supreme Court of Illinois in its opinion.

In construing one of the Federal pension acts, this Court, in *Frisbie* v. *United States,* 157 U. S. 160 (39 L. Ed. 657), on page 166 said:

> "The pension granted by the government is a matter of bounty. 'No pensioner has a vested legal right to his pension. Pensions are the bounties of the government, which Congress has the right to give, withhold, distribute, or recall, at its discretion.' Walton *v.* Cotton, 60 U. S. 19 How. 355 (15: 658); United States *v.* Teller, 107 U. S. 64, 68 (27: 352, 354).
>
> "Congress being at liberty to give or withhold pensions, may prescribe who shall receive, and determine all the circumstances and conditions under which any application therefor shall be prosecuted. No man has a legal right to a pension, and no man has a legal right to interfere in the matter of obtaining pensions for himself and others. The whole control of that matter is within the domain of Congressional power. United States *v.* Hall, 98 U. S. 343 (25: 180)."

The case of *Lynch* v. *United States,* 292 U. S. 571 (78 L. Ed. 1434), cited by appellants as supporting their contention that this Court has held that there is a vested contract or property right in a benevolent purpose pension such as the one granted by the Miller Act, we submit holds just the contrary. On page 577, the Court said:

> "Pensions, compensation allowances and privileges are gratuities. They involve no agreement of parties; and the grant of them creates no vested right. The benefits conferred by gratuities may be redistributed or withdrawn at any time in the discretion of Congress. United States *v.* Teller, 107 U. S. 64, 68, 27 L. Ed. 352, 354, 2 S. Ct. 39; Frisbie *v.* United States, 157 U. S. 160, 166, 39 L. Ed. 657, 659, 15 S. Ct. 586; United States *v.* Cook, 257 U. S. 523, 527, 66 L. Ed. 350, 351, 42 S. Ct. 200."

In *Dismuke* v. *United States,* 297 U. S. 167 (80 L. Ed. 375), a case cited by appellants, involving a Federal act

that was contended to be a pension act, the Court held that it was not a pension act because of the fact that the annuitant made actual payments to a fund out of which the annuities were to be paid. The original suit was brought in the District Court of the United States pursuant to the Tucker Act, which Act declares that it shall not be construed as giving jurisdiction of claims for pensions. The Act which granted the annuities, which the Government contended were pensions, created a fund into which the annuitants made actual payments. For this reason it was held that the suit was not one based upon a claim for a pension, and in distinguishing between pensions and annuities, the Court, on page 170, said:

> "* * * The proviso withholding jurisdiction of suits on claims for pensions was a part of the original Tucker Act, which became law March 3, 1887, long before the enactment of the Retirement Act of May 22, 1920, and at a time when the term 'pensions' commonly referred to the gratuities paid by the government in recognition of past services in the Army or Navy. The annuities payable under the Retirement Act are not gratuities in that sense. The annuitant contributes to them by deductions from his salary or by actual payments into the fund, as in the present case, and the scheme of the Act is to provide for payment of annuities, in part at least from contributions by employees, in recognition both of their past services and of services to be performed."

The pensions provided for in the Miller Law are expressly made payable out of the general tax for educational purposes. No contributions are made and there was no fund created to which contribution or salary deduction could be paid.

(b) The Miller Law is a local public law purely governmental and in no sense relates to a private enterprise of the

State. That the maintenance, operation and control of public schools in Illinois are State governmental functions cannot be questioned.

The Constitution of Illinois provides:

> "The General Assembly shall provide a thorough and efficient system of free schools, whereby all children of this State may receive a good common school education."
>
> Sec. 1, Art. VIII, Constitution of Illinois—Smith-Hurd R. S. 1935, p. 67.

The appellee, Board of Education, is but an arm of the State—its servant, created to aid in the administration of a State governmental function. What it lawfully does of a public character is done under the sanction of the State, and it is only an auxiliary of the State for the purposes of local government. The Supreme Court of Illinois so held in *Kinnare* v. *City of Chicago*, 171 Ill. 332, a tort case, where, on pages 334-35, it said:

> "It therefore appears the appellee board is a corporation or quasi corporation created, nolens volens, by the general law of the State to aid in the administration of the State government, and charged, as such, with duties purely governmental in character. It owns no property, has no private corporate interests, and derives no special benefits from its corporate acts. It is simply an agency of the State, having existence for the sole purpose of performing certain duties, deemed necessary to the maintenance of an 'efficient system of free schools' within the particular locality in its jurisdiction. The State acts in its sovereign capacity, and does not submit its action to the judgment of courts and is not liable for the torts or negligence of its agents, and a corporation created by the State as a mere agency for the more efficient exercise of governmental functions is likewise exempted from the obligation to respond in damages, as master, for negligent

acts of its servants to the same extent as is the State itself, unless such liability is expressly provided by the statute creating such agency."

This holding has been continuously adhered to by the Supreme Court of Illinois. In *Lindstrom* v. *City of Chicago,* 331 Ill. 144, where the Court, on page 147, in referring to defendant Chicago Board of Education, said:

> "The reason for this rule lies in the fact that a school district of the character here considered is created merely to aid in the administration of the State government. It owns no property, has no private corporate interests and derives no special benefits from its corporate acts. It is simply an agency of the State having existence for the sole purpose of performing certain duties deemed necessary to the maintenance of 'an efficient system of free schools' within its jurisdiction. In creating such district the State acts in a sovereign capacity for the more efficient exercise of governmental functions resting in the State, and such district is exempted from the obligation to respond in damages, as master, for the negligent acts of its servants to the same extent as is the State itself, unless liability is expressly provided by the statute."

The General Assembly of Illinois, pursuant to the above quoted section of the Illinois Constitution, created many school districts throughout the State. In *Keime* v. *Community High School District,* 348 Ill. 228, there was before the Supreme Court of Illinois for consideration an act of the General Assembly permitting the joint use of school sites by two or more school districts. A taxpayer attacked the validity of this act and asserted that it violated the due process of law provision of the State Constitution. The significance of the Court's holding, on page 234, needs no comment:

> "School districts are quasi-municipal corporations, are subject to the plenary control of the legislature,

and the latter body may from time to time, in its discretion, abolish school districts, or enlarge or diminish their boundaries or increase, modify or abrogate their powers. (24 R. C. L. Par. 6, p. 563.) We are of opinion the act is not obnoxious to the provisions of the constitution, as urged by appellant."

Appellants' claim asserted before the Court below and presented by this appeal is—The General Assembly, by the adoption of the Miller Law, made a contract with each of the teachers and principals of the public schools of Chicago to pay them an annuity for life upon retiring. This claim is not based upon any actual contract, written or oral, entered into by the parties. No such contract exists. Appellants' claim is not that they have a vested interest in a fund created by the Miller Act from which the pensions are to be paid. No such fund was created and none exists.

The Miller Law upon which appellants base their contractual claim is a local law enacted for the purpose of aiding the State in performing a purely governmental function, a work of a public character—the operation of the schools. The judicial construction of the act is in no way Federal, is purely local, and the decision of the Supreme Court of Illinois thereon is therefore final and not subject to review. This jurisdictional point, we believe, was determined by this Honorable Court in *Atkin* v. *Kansas,* 191 U. S. 207 (48 L. Ed. 148), a case involving the Kansas statute limiting the hours of labor on public contracts to eight hours a day. It was insisted that the Fourteenth Amendment to the Federal Constitution guaranteed appellee the right to pursue any lawful contract and to enter into all contracts that are proper, necessary, or essential to the prosecution of his calling and that the State of Kansas unreasonably interfered with the exercise of that right, depriving him of equal protection of the laws. The act was broad and covered work performed on behalf of

the State, or on behalf of a municipal corporation, and the appellee contended that it was in conflict with the Fourteenth Amendment.

The Court held that "a municipal corporation is, so far as its purely municipal relations are concerned, simply an agency of the State for conducting the affairs of government, and as such, it is subject to the control of the State legislature."

The Court, on page 222, held:

> "If then, the work upon which the defendant employed Reese was of a public character, it necessarily follows that the statute in question, in its application to those undertaking work for or on behalf of a municipal corporation of the State, does not infringe the personal liberty of anyone. * * * It cannot be deemed a part of the liberty of any contractor that he be allowed to do public work in any mode he may choose to adopt, without regard to the wishes of the state. On the contrary, it belongs to the state, as the guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities. No court has authority to review its action in that respect. Regulations on this subject suggest only considerations of public policy. And with such considerations the courts have no concern."

The courts are uniform in holding that school districts act only in a governmental or municipal capacity. (*Kinnare* v. *City of Chicago; Lindstrom* v. *City of Chicago, supra.*)

To the same effect as the *Atkin* case is *Heim* v. *McCall*, 239 U. S. 175, (60 L. Ed. 206) a case wherein the legislature of New York adopted an act providing that only citizens of the United States shall be employed in the construction of public works by the State or municipality, or by persons contracting with the State or such municipality. The con-

tention was that the act applied to contracts entered into before the passage of the act, as well as to contracts entered into thereafter.

The defendants in their briefs contended (page 213, L. Ed.) that:

> "A present legislative body cannot abdicate its authority, nor foreclose a succeeding legislature from action in the same matter, nor can the state permanently relinquish the trust vested in it to control and manage the public property."

It was charged that the act was unconstitutional in that it abridged the privileges and immunities of the contractors, depriving them of their right of contracting and depriving employers and employees of liberty and property without due process of law.

The court in its opinion cited with approval *Atkin* v. *Kansas, supra,* and held that the right to regulate the kind of labor that might be employed in the construction of public works is a local question and not open for review in the Federal Supreme Court on a writ of error to the State Court. In so holding, this Honorable Court, on page 191, said:

> "The contentions of plaintiffs in error under the Constitution of the United States and the arguments advanced to support them were at one time formidable in discussion and decision. We can now answer them by authority. They were considered in Atkin *v.* Kansas, 191 U. S. 207, 48 L. Ed. 148, 24 S. Ct. Rep. 124. It was there declared, and it was the principle of decision, that 'it belongs to the state, as the guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities.' And it was said: 'No court has authority to review its action in that respect. Regula-

tions on this subject suggest only considerations of public policy. And with such considerations the courts have no concern.' "

Continuing, on page 192, the court said:

"The power of regulation was decided to exist whether a state undertook a public work itself or whether it 'invested one of its governmental agencies with power to care' for the work, which, it was said, 'whether done by the state directly or by one of its instrumentalities,' was 'of a public, not private, character.' And, being of public character, it (the law—the Kansas statute) did not 'infringe the liberty of anyone.' The declaration was emphasized. 'It cannot be deemed,' it was said, 'a part of the liberty of any contractor that he be allowed to do public work in any mode he may choose to adopt, without regard to the wishes of the state.' And obversely it was said (as we have already quoted): 'On the contrary, it belongs to the state, as the guardian of its people, and having control of its affairs, to prescribe the conditions upon which it will permit public work to be done on its behalf, or on behalf of its municipalities.' See also Ellis *v.* United States, 206 U. S. 246, 51 L. Ed. 1047, 27 Sup. Ct. Rep. 600, 11 Ann. Cas. 589. The contentions of plaintiffs in error, therefore, which are based on the 14th Amendment, cannot be sustained."

We respectfully submit that under the Constitution the State of Illinois must exclusively provide for the management and operation of the public schools of the State and that the Supreme Court of Illinois having held that the Miller Act created no vested property rights in future installments of teachers' pensions, the decision of that Court is final.

The support and maintenance of a public school system as prescribed by the Constitution of the State of Illinois is essentially and exclusively a public work and "it belongs to the State, as guardian and trustee for its people and hav-

ing control of its affairs to prescribe the conditions on which it will permit public work to be done on its behalf or on behalf of its municipalities."

For the reasons herein set forth, we respectfully submit that the Supreme Court of the United States should decline to take jurisdiction on this appeal.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 713

CHESTER C. DODGE, CATHERINE L. BAIRD, AZILE B. REYNOLDS, ET AL.,

Appellants,

vs.

BOARD OF EDUCATION OF THE CITY OF CHICAGO ET AL.,

Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS; THERE HEARD ON APPEAL FROM THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS.

Hon. Harry B. Miller, Trial Judge.

MOTION OF APPELLEES TO DISMISS OR AFFIRM.

MAY IT PLEASE THE COURT:

Now come Board of Education of the City of Chicago, James B. McCahey, Ernst Buehler, Irwin Walker, Paul

Drymalski, Charles W. Fry, Joseph P. Savage, William D. McJunkin, Harry W. Solomon, Joseph J. Salat, Mrs. W. S. Hefferan, Frank H. Landmesser and Harry H. Brackett, by Richard S. Folsom, Attorney for the Board of Education of the City of Chicago, their counsel; and City of Chicago, Edward J. Kelly, Gustave A. Brand and Robert Upham, by Barnet Hodes, Corporation Counsel, their counsel, and move the Court to dismiss with costs the appeal taken herein to this Court by Chester C. Dodge, Catherine L. Baird, Azile B. Reynolds, et al., appellants, upon the following grounds:

1. The question—whether the Act of the General Assembly of July 12, 1935 violates either Section 10, Article I, or the Fourteenth Amendment of the Constitution of the United States—was not considered by the trial court in its decision, was not considered by the Supreme Court of Illinois in its decision, nor was a decision thereon necessary to the determination of the cause. The point involved, as stated by the Illinois Courts, was—did the Act of the General Assembly of Illinois of May 19, 1926, as amended in 1927, grant to the appellants vested rights based upon contracts?

2. The decision of the Supreme Court of Illinois was based primarily on local law and questions of local law are not open to reexamination in this Court.

In the alternative, appellees move this Court to affirm the judgment of the Supreme Court of Illinois on the following grounds:

1. No substantial Federal question affording a basis for review by this Court is presented by the appeal.

2. The Federal question which appellants attempt to raise in this Court is foreclosed by prior decisions of this Court.

Respectfully submitted,

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